Supreme Court of the United States.

No. 184.—October Term, 1904.

The United States, Appellant, vs. John Smith. } Appeal from the Court of Claims.

[April 3, 1905.]

On May 26, 1899, John Smith was serving under enlistment as a fireman of the first class on board the United States naval vessel Yorktown, then at anchor in Illiolo harbor, Philippine Islands. On the date named Smith was reported to the commanding officer of the Yorktown as having refused to do duty, and consequently such officer ordered him "put under sentries as a prisoner in single irons for safekeeping to await trial by a general court martial." Subsequently, on June 30, 1899, Rear Admiral Watson, the commander-in-chief of the United States naval force on the Asiatic station, convened a general court martial, to meet on July 3, 1899, for the purpose of trying accused persons who might be legally brought before the court, and on the same day a charge was preferred against Smith, by the Rear Admiral, accompanied with a specification, for refusing to obey a lawful order of his superior officer. Smith, who as already stated had been placed under arrest on May 26, 1899, was served on July 1, 1899, with a copy of the charge and specification which had been preferred against him and an extra watch was put over him as well as over other prisoners who were being held for trial. On July 5, 1899, Smith was sent under guard before the court martial. He was tried, found guilty and sentenced "To be confined in such place as the Secretary of the Navy may direct for a period of one year, to perform extra police duties during such confinement, to lose all pay that may become due him during such confinement, except the sum of three dollars ($3.00) per month for necessary prison expenses, and a further sum of twenty dollars to be paid him at the expiration of his term of confinement, when he shall be dishonorably discharged from the United States Navy."

The term of imprisonment prescribed in the sentence was somewhat mitigated by the Secretary of the Navy. Thereafter, on being released, Smith sued in the Court of Claims to recover the pay which would have been earned by him had he been entitled to receive the same during the period covered by the sentence. The right to recover was based on the

averment that a copy of the charge had not been served on Smith when he was originally put under arrest on May 26, 1899, it being claimed that for this reason the judgment of the court martial was void. After finding the facts as above recited the Court of Claims concluded, as matter of law, that the claimant was entitled to recover, and from the judgment entered upon such finding the Government appealed.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

Article 43 of section 1624 of the Revised Statutes, upon which the Court of Claims based its legal conclusion that the action of the court martial in question was void because the charge and specification were not served upon the claimant at the time of the original arrest, reads as follows: "The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest."

It is conceded by the findings that at once when the charge and specification were formulated by Rear Admiral Watson and the court martial was ordered to be convened, a copy of the charge and specification was served upon Smith. It is also established by the findings that no objection as to tardiness of service was made at the time of trial. Conceding, *arguendo* solely, and without so deciding, that under these circumstances the objection as to the lateness of the service was jurisdictional and could be collaterally inquired into, we think the contention is wholly devoid of merit. Nearly ten years before the trial in question was had, in the year 1890, the Secretary of the Navy submitted to the Attorney General the question of whether the arrest referred to in article 43 related to the preliminary arrest which might be consequent upon the commission of an offence, or applied to the arrest made after charges had been formulated and as court martial ordered. The Attorney General advised that the word arrest as employed in article 43 did not relate to the preliminary arrest or detention of an accused person awaiting the action of higher authority to frame charges and specifications and order a court martial, but to the arrest resulting from the preferring of the charges by the proper authority and the convening of a court martial. (19 Opinions of Attorney General, 472.) The reasoning by which the Attorney General reached the conclusion just stated we think was absolutely conclusive. Doubtless the opinion became the rule of practice in the Navy, and the construction affixed by the Attorney General to the statute was sanctioned by this court in *Johnson* v. *Sayre*, (158 U. S. 109,) and such construction has been reiterated in an opinion announced this day. (*Bishop* v. *United States*, U. S. .)

Whilst these considerations dispose of the contentions raised and passed on below, a new ground for reversal was urged at bar, founded on article 38 of section 1624 of the Revised Statutes. That article reads as follows:

"Art. 38. General courts martial may be convened by the President, Secretary of the Navy, or the commander-in-chief of a fleet or squadron; but no commander of a fleet or squadron in the waters of the United States shall convene such court without express authority from the President."

Although it is not denied that Rear Admiral Watson was a commander of a fleet within the meaning of that expression as employed in article 38, it is insisted that as he convened the court-martial while in Manila Bay, about six weeks after the treaty with Spain by which the Philippine Islands were acquired by the United States, therefore the fleet or squadron under his command was "in the waters of the United States," within the meaning of those words as employed in the enactment in question, and there was no power in the commander-in-chief to convoke a court martial without express authority from the President, which is not found to have been given. This objection, if well taken, is jurisdictional, but in our judgment it is without merit; and we reach this conclusion wholly irrespective of the status of the Philipine Islands.

The clause in question was originally enacted in 1862, before even the acquisition of Alaska, and was intended, we think, to apply to those waters within what was termed by Congress in the act of March 3, 1901, (31 Stat. L. 1108,) the continental limits of the United States. In other word, the provision in question did not take into view the dominion or sovereignty of the United States over territory beyond the seas and far removed from the seat of government, but contemplated waters within the United States in the stricter and popular sense of the term. Looking to the language used, in the light of the surrounding circumstances and the purpose which it was intended to accomplish, (*Platt* v. *Union Pacific R. R.*, 99 U. S. 64,) it is, we think, manifest that the prohibition against the convocation by the commander of a fleet or squadron of a general court-martial, without the previous authorization of the President, was intended to be operative only when the fleet or squadron was in a home port, as above defined. That is to say, that Congress contemplated the necessity of an order from the President when the circumstances supposed to require the convening of the court martial could be with facility submitted to the President for his action in the premises. To give a broad meaning to the expression "waters of the United States," as employed in Article 38, by construing those words as referring not only to the home waters but to far distant waters, would, we think, defeat the plain purposes of Congress and seriously impair, if not destroy, an important power vested in the commander of a fleet or squadron when at distant stations, remote from

the home country. Certainly, if the remoteness from the continental limits of the United States is immaterial and the restriction of Article 38 is applicable to the commander when his fleet or squadron is within waters thousands of miles removed from the boundaries of the United States, in the restricted sense of that term, no good reason is apparent why the commander of a fleet or squadron should not have been forbidden, without the leave of the President, to convoke a general court martial, irrespective of where his fleet or squadron might be situated.

Judgment reversed.

True copy.

Test:

Clerk Supreme Court, U. S.